IN THE

Supreme Court of the United States

No.

FLORA REALTY AND INVESTMENT COMPANY, a corporation,
Appellant,

v.

CITY OF LADUE, a municipal corporation, *Appellee*

Appeal from the Supreme Court of Missouri.

BRIEF OF APPELLANT IN OPPOSITION TO STATEMENT OF APPELLEE RE JURISDICTION AND IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

JURISDICTION.

The jurisdiction of this Court is invoked by virtue of Section 1257 (2) of Title 28 U.S.C.; 62 Stat. 929.

OPINION BELOW.

The Opinion of the Supreme Court of Missouri is to be found in the Jurisdictional Statement filed in this matter as Exhibit D, and in 246 S.W. (2d) 771.

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED.

Statutes involved are Section 1257 (2) of Title 28 U.S.C.; 62 Stat. 929 and City Ordinance #282 of the City of Ladue, a city of the fourth class of the State of Missouri, which Ordinance is contained in the Jurisdictional Statement filed in this matter as Exhibit A. Section 1 of Article XIV of the Constitution of the United States is the constitutional provision invoked herein.

PRELIMINARY STATEMENT.

Appellant since 1911 has been the owner of 104 acres of undeveloped land in St. Louis County, Missouri now located in the City of Ladue, a municipality which contains some 5158 acres and only 5386 persons (1950 census). It lies a few miles west of the western boundaries of the City of St. Louis.

The Zoning Ordinance here involved was adopted by the City of Ladue in July of 1948. It divides the city into seven districts. District "A", in which there are approximately 1000 acres, is the most highly restricted of all—requiring a minimum lot of three acres (130,680 square feet) per family and forbidding institutional use except on special permit. Appellant's land was placed by said Ordinance and District Map (an integral part thereof) in District "A". Said District Map is to be found in Exhibit "A", attached to the Jurisdictional Statement. The location of Appellant's land is outlined thereon in red.

There is no symmetry in the layout of District "A" which is adjacent to two golf clubs and embraces a third, and it has a common "frontier" adjacent to Appellant's land with the Village of Huntleigh.[1]

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[1] Only two places in the entire State of Missouri require under zoning ordinances a minimum of three acres per family in certain districts. They are the City of Ladue and the Village of Huntleigh. The Village of Huntleigh at one time had an ordinance calling for a minimum of 4.9 acres per family and forbade insti-

Appellant filed a Bill in Equity against the City of Ladue in the Circuit Court of St. Louis County, Missouri on the 24th day of November 1948, challenging the validity of its zoning law under the State and Federal constitutions, insofar as it classified and restricted the use of Appellant's 104 acres of land for residential purposes, in tracts of less than three acres per family, and forbade institutional use. (Tr. 5-11, R..)[2] (Appendix herewith)

The Trial Court after a hearing dismissed the Petition and rendered judgment in favor of Defendant. The matter was appealed to the Supreme Court of the State of Missouri and this Appeal has been lodged from its decision adverse to Appellant.

ARGUMENT.

I. Appellee Has Excised Meaningful Words and Has Blended Paragraphs in Its Quotation from the Opinion.

Under the caption, "*Statement of Issues on Appeal*", the Appellee purports to quote from the Opinion of the Missouri Supreme Court. However, the excerpt is incomplete in material respects and gives a distorted version of what the Court had to say with reference to the institutional use and restriction.

The part quoted by the Appellee is set up as if the opening words were the beginning of a paragraph, without any indication of omissions of the topic sentence. The opening sentence omitted from the paragraph reads:

"There remains only the question of whether the re-

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tutional use but the first ordinance was held unconstitutional in *Sulgrave Realty Company* v. *Village of Huntleigh*, No. 9401, (1937), in the District Court of the United States for the Eastern Judicial District of Missouri. (unreported)

[2] The Transcript of evidence has not as yet been filed by the Supreme Court of Missouri and hence the Record has not been officially printed under the direction of the Clerk of this Court.

strictions on institutional use in the A District was 'highly unreasonable'."[3]

When the omitted words are read in relationship to the balance of the quoted part, it is obvious that the Missouri Supreme Court was ruling on that issue, which necessarily involved a Federal, no less than a State constitutional question, under the briefs submitted to the Court.

The excerpt relied on by Appellee is in reality made up of two paragraphs. A significant part of the second paragraph, which is masked by asterisks in the excerpt, was omitted by Appellee. We submit that the first and second sentences of the paragraph that were left out by Appellee demonstrate that the Court ruled adversely to the contention that the Ordinance was in contravention of the XIV Amendment.[4]

On the basis of its emasculated presentation of the Opinion the Appellee then argues that the State Supreme Court disposed of Appellant's attack on the institutional use restrictions of the Ordinance upon adequate non-Federal grounds. The Opinion refutes the Appellee.

II. Appellee Has Distorted the Issues Below and Overlooked Controlling Factors.

Under the heading of *"No Substantial Federal Question is Presented by the Attempted Appeal,"* the Appellee stated,

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[3] *Flora Realty & Investment Co.* v. *City of Ladue*, 246 S.W. (2d) 771, 779.

[4] The omitted parts read as follows:

> "Viewing the ordinance as a part of a general zoning plan and in its general scope, there is no doubt as to its validity. Euclid, Ohio v. Ambler Realty Co. supra, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303, 311. Our statutes, Chapter 89, Sec. 89.010 et seq. expressly provide for the regulation of land use. the divisions into districts, et cetera. Further, the police power, as evidenced by the zoning ordinance, is not limited to the mere suppression of offensive uses of property, but may act constructively for the promotion of the general welfare." lc. 780.

"The only remaining contention attempted to be presented is that a provision of the City Ordinance placing Appellant's property in a District wherein the use of property is limited to single family residences on tracts of not less than three acres constitutes the taking of Appellant's property without due process of law for the sole reason that 'the zoning law arbitrarily discriminated against the Plaintiff in the use of its land, to its financial disadvantage while permitting others in different districts in close proximity to it to have broader market and development opportunities for land not any better suited environmentally or inherently for broader uses than plaintiff's land'."

The limited and inaccurate excerpt from Appellant's Petition quoted by Appellee distorts the full range of Appellant's pleading. An examination of the Petition, which is set out in full in Appendix, will show that the Federal issues before the Trial Court were not as narrowly drawn as Appellee implies. However, even if the issues before the Trial Court had not drawn in question the validity of the Ordinance on *all* of the Federal grounds urged before the Missouri Supreme Court and ruled on by it, the Appellee has stressed an immaterial matter. This Court in passing on its jurisdiction under Section 1257 (2) 28 U.S.C., looks to the state supreme court's opinion and not to the trial court to determine if the validity of a statute was drawn into question on federal grounds, and if the decision was in favor of its validity. *Home Insurance Co.* v. *Dick,* 281 U.S. 397, 407, 74 L.Ed. 926, 933; *Chicago, R.I. & P.R. Co.* v. *Perry,* 259 U.S. 547, 551, 66 L.Ed. 1056, 1058.

III. The Decision Below Involved Determinations of Federal Constitutional Questions.

The Court in its Opinion (*Flora Realty and Investment Co.* v. *City of Ladue,* 246 S.W. (2d) 771) held,

1. That the restrictions in the Ordinance on the use of Appellant's property for institutional purposes were not

unreasonable in as much as the restriction on institutional use was not absolute in other Districts, and it also cited Section 8 of the Ordinance, permitting use exceptions under certain circumstances for institutional use. (lc. 779, 780)

2. That it could not rule on the validity of said Section 8 as the pleadings and evidence did not show Appellant had applied for or been denied a permit thereunder. In addition, "the use of a specific part or all of Appellant's property for a specific institutional use or purpose is not presented by this Record." (lc. 780.)

3. That "Viewing the Ordinance as a part of the general zoning plan and in its general scope, there is no doubt as to its validity." (lc. 780.)

4. That "We do not view the Ordinance as an attempt to segregate economic classes by zoning or as an attempt to restrict the "A" District, or any other districts to particular classes of residents." (lc. 779.)

5. That "On the Record presented we cannot say that this Ordinance, in classifying territory into different residential zones with different minimum area requirements and placing Appellant's property in District "A" with minimum three acre area restrictions, bear no substantial relation to public health, safety, morals or general welfare and therefore, is unreasonable under the facts shown. We must hold that the issue is fairly debatable and, in respect to the classification of Appellant's property, the Ordinance in that respect is valid." (lc. 779.)

IV. It Is Not Necessary for the Court Below to Expressly Say It Is Ruling on a Federal Question.

The citation by Appellee of *Memphis Natural Gas Co.* v. *Beeler*, 315 U.S. 649, 86 L. Ed. 1090, 62 S. Ct. 857, and *Fox Film Corporation* v. *Muller*, 296 U.S. 207, 80 L. Ed. 158, leaves us puzzled. The decision of the Missouri

Supreme Court turned on constitutional issues and not on local or non-Federal grounds. It is not necessary for the Court below to specifically designate that it is ruling on a Federal constitutional question. See *New York ex rel Bryant* v. *Zimmerman,* 278 U.S. 63, 66; also Exhibit B of Jurisdictional Statement.

V. Every Zoning Case Involving the Validity of Classifications as Applied to a Particular Property and Situation Is Sui Generis.

The references to *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365, *Zahn* v. *Board of Public Works,* 274 U. S. 325, and *Hadacheck* v. *Sebastian,* 239 U. S. 394, by Appellee, as if the constitutional questions raised herein have already been determined, are highly misleading. Appellant is not seeking to have elementary matters redetermined, but based upon the particular facts and circumstances in this case poses substantial questions. It has been heavily damaged by the restrictive legislation, and it is not in court for frivolous purposes.

As this Court well knows, every opinion handed down by it is to be read having regard to the facts of the case and the question actually decided. In zoning cases the rule is no different. In the Euclid case (supra) this Court emphasized that ". . . the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality." (lc. 388.)

In *Nectow* v. *Cambridge,* 277 U. S. 183, 72 L. Ed. 842, this Court struck down a provision in a city zoning ordinance which unreasonably classified particular property, and made it clear that the governmental power to interfere by zoning with the general rights of the land owner is not unlimited, and other questions aside, such restriction cannot

be imposed if it does not bear a substantial relation to the public health, safety, morals or general welfare.

"The general rule, at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." This quotation from Mr Justice Holmes' opinion in *Pennsylvania Coal Co.* v. *Mahon, et al,* 260 U. S. 293, emphasizes that every case under the police power must rest on its own bottom.

Appellee has premised one of its arguments upon a confessed ignorance of how many cities, towns and villages there are in the United States (intimating an exaggerated figure despite available census data), to set up a bugaboo that this Court will be overwhelmed with zoning cases if it reviews the constitutional issues in this matter. The same logic would require this Court to deny redress to any of the 150 million citizens of the United States because there are so many of them, some of whom may some day require judicial intervention against infringement of Federal constitutional rights.

The right to have particular zoning legislation examined in the light of its classification of a particular property has been expressly recognized in *Euclid* v. *Ambler, (supra,* le. 395). Appellee would have such rights and those accorded under Section 1257, Title 28, U. S. C. denied to Appellant not on the basis of the merits, but by a not very subtle suggestion to this Court to deny due process and to abandon its function.

VI. When This Court Reviews State Court Judgments Involving Constitutional Issues It Must Review Both the Legal Issues and Factual Matters With Which They Are Commingled.

We believe that the excessive and unconstitutional restrictions complained of by Appellant are manifest on the face of the Ordinance in this case, but if the Court can't resolve the questions of law without resort to other facts and circumstances in the Record, it is not bound in a case

of this kind by the findings of the Court below on questions of law or on a composite of fact and law.

This is not an appeal involving findings in an anti-trust suit, or from a judgment in a Federal Court on general issues turning on findings of fact, or an appeal stemming from an administrative proceeding wherein special expertise has passed on questions of fact as in *Portland Ry. etc. Co.* v. *Oregon R. R. Commission*, 229 U. S. 397, 51 L. Ed. 1248. The excerpt in said case as quoted by Appellee from page 412 of the Opinion is not the complete paragraph but only the latter part of one. The omitted sentences which precede make a distinction between that type of case and of others where the Court will re-examine the facts found, with a view to ascertaining the correctness of the conclusions reached. Two of the leading cases therein are again cited by this Court in *United States* v. *John J. Felin & Co.*, 334 U. S. 624, 639, 640, 92 L. Ed. 1614, 1626. The rule on the scope of review was restated there as follows:

> "* * * Where the conclusion is a 'composite of fact and law,' Cedar Rapids Gas Light Co. v. Cedar Rapids, 223 U. S. 655, 668, 56 L. Ed. 594, 604, 32 S. Ct. 389, this Court may certainly hold that as a matter of law the findings are erroneous. See e.g., Washington ex rel. Oregon R. & Nav. Co. v. Fairchild, 224 U. S. 510, 528, 56 L. Ed. 863, 869, 32 S. Ct. 535. Even when this Court reviews State court judgments involving constitutional issues it 'must review independently both the legal issues and those factual matters with which they are commingled.' See Oyama v. California, 332 U. S. 633, 636, ante, 249, 254, 68 S. Ct. 269 (and the authorities therein cited.) Similarly, findings concurred in by two courts do not control the decision here where 'facts and their constitutional significance are too closely connected' and 'the standards and the ultimate conclusion involve questions of law inseparable from the particular facts to which they are applied.' United States v. Appalachian Electric Power Co. 311 U. S. 377, 403, 85 L. Ed. 243, 250, 61 S. Ct. 291. * * *".

Also see *Smith* v. *Allwright*, 321 U. S. 649, 662, 88 L. Ed. 987, 996; *Great Northern R. Co.* v. *Washington*, 300 U. S.

154, 165, 166, 81 L. Ed. 573, 581; *Fay* v. *New York*, 332 U. S. 261, 272, 91 L. Ed. 2043, 2052; *Truax* v. *Corrigan*, 257 U. S. 312, 324, 325; 66 L. ed. 254, 259, 260.

VII. Simon v. Needham Cited by Appellee Points Up the Merits of Appellant's Complaint in This Appeal.

Appellee has cited four cases dealing with minimum area restrictions, but none of them involved a restriction on land use for residential purposes of three acres per family. Three of the cases are by New York intermediate appellate courts.

Simon v. *Needham*, 311 Mass. 560, 42 N. E. 2d 516, is a leading case. The court there upheld a one-acre minimum requirement for residences in connection with a village zoning ordinance.[8] The court, fearful that its ruling would be misconstrued, stated:

> "We cannot quite pronounce the instant by-laws invalid when applied to petitioner here in all the circumstances disclosed by this record. We make no intimation that if the lots were required to be larger than an acre, or if the circumstances would be slightly different, the same result would be reached."

The Court further stated:

> "A zoning by-law cannot be adopted for the purpose of setting up a barrier against the influx of thrifty and respectable citizens who desire to live there and who are able to and willing to erect homes upon lots upon which fair and reasonable restrictions have been imposed, nor for the purpose of protecting the large estates that are already located in the district. The strictly local interest of the town must yield, if it appears that it is plainly in conflict with the general interest in the public at large . . ."

In *Gignoux et al.* v. *Village of King's Point*, 99 N. Y. S. 2nd 280, relied on by Appellee, the trial court was dealing

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[8] There is a considerable spread between 1 acre and 3 acre zoning—to be exact, 87,120 sq. ft.

with zoning of less than one acre,—40,000 square feet. It sustained the restriction on the basis of *Simon* v. *Needham, supra*, as well as that of *Dillard* v. *Village of North Hills*, 94 N. Y. S. 2d 715, but it felt impelled to state that it was "a most unusual Village surrounded by water on three sides, heavily wooded, with no business," and the Court requoted from *Simon* v. *Needham* that a zoning law cannot be used as a barrier against the influx of thrifty and respectable citizens, etc.

In *Dillard* v. *Village of North Hills, supra*, the court was dealing with a zoning ordinance providing for a two acre residence district. The judgment of the lower court which held that the zoning ordinance was unconstitutional and void and as an attempt to protect the large estates in the village, was reversed in a short opinion, and the court held that the two acre restriction was justifiable "as an elastic application of police power". Apparently the court's "elastic" was stretched by certain facts it stressed with reference to the plaintiffs there:

> "*They purchased for the purpose of resale with profit with knowledge of the restriction* . . . They sold four of 48 acres for more than half the purchase price, and the remainder of their parcel on their own showing is worth as much or more than the sum paid for the entire parcel. The parcel is of the same quality as the average land in the village" (94 N. Y. S. 2d 715).

The plaintiffs took an appeal, but later dismissed it.

In *Elbert* v. *Village of North Hills*, 28 N. Y. S. 2nd 317, the decision turned on a question of pleading only in a suit pertaining to two acre zoning restrictions of the same village of North Hills, (involved in the *Dillard* case, *supra*). Most of that opinion consists of obiter.

We observe that the case of *Sulgrave Realty Co.* v. *Village of Huntleigh*, to which we referred in footnote 1 of this brief, has not been mentioned by the Appellee, although it is quite familiar with that decision pertaining to a contiguous village in St. Louis County that had attempted by zoning to preserve and extend an exclusive estate district with

a minimum lot area of 4.9 acres per family. The late Judge C. B. Faris held that the ordinance was enacted "solely for the purpose of prohibiting the development and improvement of the remaining undeveloped tracts of land in said Village, except in the form of large estates . . .", and that the ordinance violated the constitution of the United States, and constituted a taking of property without just compensation, and was not a constitutional or reasonable exercise of the police power of the State of Missouri.

VIII. The Missouri Supreme Court Has Decided Federal Questions of Substance Not Heretofore Determined by This Court and in A Way Not in Accord With Applicable Decisions of This Court.

The matters on appeal are covered by the Assignment of Errors annexed to the Jurisdictional Statement. They raise important questions not only from the viewpoint of Appellant but to property owners everywhere and of various incorporated communities.

The questions in this case are of constitutional importance. *Can* a city consistently with the XIV Amendment, by zoning, restrict the use of land suitable for residential purposes to tracts of not less than three acres per family? *Can* a city consistently with the XIV Amendment, by zoning, restrict the use of land suitable for churches, schools, hospitals, orphanages and homes for the aged, without a permit for such purposes, which permit is dependent in a measure on the caprice and reaction of certain neighbors, which in turn determines how many votes of the City Council must be cast for such permit? Cf. *Washington ex rel Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116, 122, 123, 73 L. Ed. 210, 214 and *Eubank* v. *City of Richmond*, 226 U. S. 137, 143, 144. *Can* a City consistently with the XIV Amendment, by zoning, so classify and restrict the use of property suitable for either residential or institutional purposes, in a manner designed to prevent its use by people of moderate means or humanitarian institutions? See *Womens*

Kansas City St. Andrews Society v. *Kansas City*, 58 F. (2nd) 593, 601, 604. An answer to these virgin questions is involved in this Appeal.

IX. Courts of Some States Have Not Hesitated to Tear the Sham Away from Zoning Laws Designed to Segregate Economic Classes.

See *American Veterans Housing Corp. Inc.*, v. *Zoning Board of Adjustment*, 69 D. & C. 449 (1949 Pa.). Also *Lionshead Lake, Inc.* v. *Wayne Township*, 73 A. 2d 287, 288, 8 N. J. Sup. 468, (1950); *Elizabeth Lake Estates et al.* v. *Waterford Tp.* 317 Mich. 359, 26 N. W. 2d 788, (1947).

In *Trust Company of Chicago* v. *City of Chicago*, 408 Ill. 91, 96 N. E. 2d 499, 505, 506, the court had up for review an ordinance of the City of Chicago which had rezoned certain lots in a block, occupied by fine mansions, to prevent the construction of apartments. The City contended it had a valid right to "preserve the block as an oasis of gracious family living in a locality of unique natural beauty" lc. 502. The Court concluded that the ordinance was not passed to promote general welfare, but was seeking to bestow upon individual residents special benefits so they may continue in their "oasis of gracious family living."

X. IN CONCLUSION.

We sincerely believe that the Ordinance here under assail was not based upon necessities of public health, safety, morals or general welfare, but upon a desire to employ the device of zoning to make exclusive districts more exclusive.

In *Minnesota* v. *Barber*, 136 U. S. 313, 319, this Court stated that the presumption that the statute (on meat inspection) was enacted in good faith for the purpose expressed in the title, cannot control the final determination of the question of whether it *is* repugnant to the constitution of the United States. The court held that there may be no purpose on the part of a legislature to violate the constitution, and yet a statute enacted by it, may by its necessary

operation, be destructive of constitutional rights. It quoted from *Henderson etc.* v. *New York etc.* 92 U. S. 259, 268, "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." Other cases were cited to like effect. "The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

The natural effect of the ordinance here assailed has been to destroy the opportunities of people in moderate circumstances to buy homes sites in District "A". (See Item 8 of Exhibit C, a part of Jurisdictional Statement). It has also deprived the community of desirable locations for humanitarian institutions, churches, schools and the like.

The decision of the Missouri Supreme Court, if allowed to stand, establishes a precedent that through the instrumentality of zoning regulations exclusive estate districts can be fostered and encouraged. Greater restrictions on land use without compensation can be justified under the same rationale. Despite the needs of a growing population, families in moderate circumstances and philanthropic institutions and schools will find the best sites barred against use by them, because reserved by "law" for the benefit of a select few.

This Appeal is properly lodged and should be heard on its merits.

Respectfully submitted,

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July 15, 1952.

APPENDIX.

IN THE
CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

Div. No. 2
Cause No. 185310

FLORA REALTY AND INVESTMENT COMPANY, a corporation,
Plaintiff,

v.

CITY OF LADUE, a municipal corporation, *Defendant*

Bill in Equity to Decree a Portion of City Ordinance #282 (Zoning Ordinance) of the City of Ladue to be Void and Unconstitutional.

Amended Petition.

Now comes the plaintiff in the above-captioned matter and for its cause of action states as follows:

1. That it is now and was at all times hereinafter mentioned a Missouri corporation and the owner, for more than 35 years, of 103.618 acres of land in St. Louis County, Missouri, now a part of the City of Ladue, having a frontage of 1676.04 feet on the east side of Lindbergh Boulevard and extending eastwardly to the west side of Warson Road, said property being a short distance south of Litzinger Road; that approximately 100 acres of said tract are unimproved and are used for agricultural purposes.

2. That the City of Ladue is now and was at all times hereinafter mentioned a municipal corporation (city of fourth class) organized and existing under the laws of the State of Missouri; that the said municipality adopted a

zoning ordinance #282 on the 19th day of July, 1948; that in said zoning ordinance, the land embraced in its city limits is divided into seven districts; that a "District Map" dated the 17th day of May, 1948, was made a part of the ordinance, and it provides (Section 2) that all the notations, references and other information shown on the "District Map" shall be as much a part of the ordinance "as if the matters and information set forth by said map were all fully described therein."

3. The aforesaid ordinance is attached to and made a part hereof. It places the property of plaintiff in District A subject to use and area limitations of Section 9. Property *for residential purposes* in District A is the most highly restricted of all the districts, namely to a minimum of *three acres per family*. The restrictions in District B call for a minimum of *1.8 acres per family;* District C for a minimum of 30,000 square feet (*approximately ¾ of an acre*) per family; in District D for a minimum of *15,000 square feet per family;* in District E for a minimum of *10,000 square feet per family* (approximately one-thirteenth of the minimum space required in District A). The restrictions in District F permit a family to dwell on the second floor of any commercial structure on a lot fronting 25 feet or more, even though the lot contains *less than 10,000 square feet.*

4. (This paragraph was stricken by order of Court on motion of defendant, May 23, 1949.)

5. Plaintiff avers that the health, safety and welfare of the City of Ladue do not require a limitation on the use of plaintiff's property to a minimum of three acre tracts per family for residential purposes; that it believes and therefore avers that the zoning law with reference to plaintiff's property was adopted pursuant to a plan to maintain and expand in the city of Ladue a most exclusive "estate" district available for residences to only the opulent.

6. Plaintiff states that the matters complained of have affected the marketability and value of its property which is now subject to the terms of arbitrary, discriminatory, and unreasonable restrictions on its use; that the zoning and classification of its property in District A constitutes the taking and damaging of its property without compensation and without due process of law; that the City of Ladue has acted in violation of the following provisions of the Constitution of the State of Missouri, and of the Fourteenth Amendment to the Constitution of the United States for the foregoing reasons and those hereinafter set out.

a) In violation of Article 1, Section 10 of the Constitution of the State of Missouri, which forbids the deprivation of liberty or property without due process of law. The restrictions aforesaid on use and area are without relationship to the needs of the health, safety, morals and general welfare of the citizenry (present and future) of Ladue. Plaintiff avers that the City of Ladue in passing the ordinance in the manner and form aforesaid partially confiscated private property of plaintiff for arbitrary or esthetic purposes and created a section in which citizens in moderate circumstances could not afford to dwell, thereby establishing a special residential area for entrenched wealth to the prejudice of plaintiff's rights and of others.

b) In violation of Article 1, Section 26 of the Constitution of the State of Missouri which prohibits the taking or damaging of private property for public use without just compensation and which provides for a jury of at least three freeholders to fix damages in such connection. Plaintiff avers that its property has been damaged and that part of its value has been taken in the arbitrary and unreasonable limitation on the use thereof, without compliance with said provision of the Constitution, if the restriction on use is for "public" purposes. Plaintiff avers that the restriction on use of its property in less than three acre parcels for single residential purposes, or for multiple dwellings or

school purposes, or religious institutions is unreasonable; that the building lines and height restrictions are arbitrary.

c) In violation of Article 1, Section 28 of the Constitution of Missouri, which provides that private property shall not be taken for private use, with or without compensation, unless by consent of the owner, except for very limited purposes. It further provides that when an attempt is made to take private property for a use alleged to be public, the question of whether the contemplated use is actually public shall be judicially determined without regard to the legislative declarations thereon. Plaintiff states that its property has been "taken" for non-public use under the mask of a zoning regulation.

d) In violation of the Fourteenth Amendment to the Constitution of the United States which forbids through state action (the City of Ladue is an instrumentality of the State of Missouri) the deprivation of liberty or property without due process of law or the denial to any person within its jurisdiction of the equal protection of law. (See paragraph 6 (a) hereof.). Plaintiff states that the arbitrary and unreasonable classification of its property in District A was a denial to it of equal protection of law, in that the zoning law arbitrarily discriminated against plaintiff in the use of its land, to its financial disadvantage, while permitting others in different districts (see paragraphs 3 and 5 hereof) in close proximity to it to have broader market and development opportunities for land not any better suited environmentally or inherently for broader uses than plaintiff's land.

7. Plaintiff further states that it has no adequate remedy at law to protect the title of its property which is now subject to the burden of an unreasonable limitation on its use that although it has requested the City of Ladue to refrain from such interferences with its property or damaging its value that it has been to no avail; that it has suffered and

will suffer incalculable and irreparable injury and damage if a court of equity does not intervene and grant relief.

Wherefore, plaintiff prays for a judgment, order and decree that ordinance # 282 of the City of Ladue, insofar as it restricts the use of plaintiff's property, is unreasonable, arbitrary and discriminatory and that the restrictions affecting plaintiff's property in District A are void and unconstitutional, and that the said ordinance has taken and damaged plaintiff's property without due process of law, and for such further orders and decrees as to the court may seem meet and proper.

ANNALEA WELKER,
VICTOR PACKMAN,
Attorneys for Plaintiff

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